IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

Writ Petition No 588 of 2005

Smt Usha Mukundrao Acharya and ors.. petrs
vs
Vishwas N Devare and ors..Respondents

Mr.S.B.Deshmukh with Vinita V Bakre-Shastry for petitioners

Mr.V.P.Malvankar AGP for respondents

CORAM: A.P.SHAH & D.Y.CHANDRACHUD JJ.

Dated 23.6.2005

P.C:

Leave to amend.

2. Rule.Mr Malvankar learned AGP waives service for respondents nos l and 2. By consent, Rule is made returnable forthwith.

3. By this petition the petitioners are seeking a writ of mandamus or any other appropriate writ, direction or order of the like nature under Article 226 of the Constitution, quashing and setting aside the order passed by the respondent no.2 Deputy Secretary, Higher and Technical Education Department, Maharashtra State, dated 30.l2.2004. Only few facts need to be stated in order to appreciate the grievance of the petitioners. The

lst petitioner was the Principal of Savitribai Phule Shikshanshastra Mahavidyala, Kolhapur. This college was run by Shri Shahu Chatrapati Shikshan Sanstha, and it was recognised by the National Council for Teachers Education (NCTE). The NCTE vide its letter dated 26.5.2000 pointed out certain deficiencies in respect of the said college and called upon the Management of the Shahu Chhatrapati Shikshan Sanstha to remove the same. The Management failed to comply with the same and consequently NCTE directed dereognition of the said college by order dated 26.5.2000. Since the institution was closed as a result of the order passed by the NCTE, the lst petitioner and other teaching and non-teaching staff was rendered jobless. As the earlier management was not in a position to run the college, the lst petitioner and other teaching and non-teaching staff requested the 2nd petitioner i.e. Shahu Shikshan Prasarak Seva Mandal, hereinafter referred to as the new Management, to take over the said college from the earlier Management. The Shivaji University was pleased to take congnizance of the fact that the college is closed on account of non compliance on the part of the earlier management with the requirement of the NCTE .The Management Council of

the University in its meeting held on 26.6.200l passed a resolution recommending to forward the proposal of transfer of the management to the State Government for appropriate action. The University also addressed a letter to the respondent no.2 dated l3.7.200l requesting him to issue appropriate direction for transfer of management under section 92(6) of the Maharashtra University Act.

3. It appears that despite recommendation made by the University, the State Government failed to take any action and unless the petitioners got No Objection Certificate from the respondent nos.l and 2, it was not possible for the petitioners to proceed further for making application under section l4 of the National Council for Teachers Education Act. Therefore the petitioner filed Writ Petition No.9637 of 2003 in this court. That petition was disposed by the Division Bench vide order dated 2.ll.2004 directing respondent nos.l and 2 to take decision on the application made by the petitioners on l3.ll.2003. It appears that thereafter the University made a report to the State Government that since as per the provision of section 587, it is necessary that the earlier Management should have moved an application and

since the earlier Management has not made application, therefore statute 587 is not complied with and therefore the University cannot make any recommendation. In the light of the report made by the University, respondent nos.l and 2 vide order dt 5.ll.2004 refused to take any decision on the application made by the petitioner for the time being as the earlier Management had not complied with the statute 587.

4. The petitioners again approached this court by filing Writ Petition No. 9856 of 2004. The Division Bench vide order dated 23.l2.2004 allowed the petition holding that the provision of the statute 587 has no application to the facts and circumstances of the case and remanded the matter back to the State Government. In pursuance of the order passed by this court the respondent no 2 again considered the application and rejected the same vide order dated 30.l2.2004. By this order both requests of the petitioners i.e. request for giving No Objection Certificate as well as the request for transfer of college under the provisions of section 92(6) were rejected. The material portion of the impugned order of the respondent no.2 reads as under:

"As sufficient number of B Ed colleges are available in all the districts, under Kolhapur University,Shivaji University, Kolhapur has refused all l6 proposals,for the year 2005-2006, on the ground of not appearing in the master (perspective)plan.

While taking a decision on the proposal received from all the Universities for the year 2005-2006, considering the fact viz ‘there is no need of B Ed Colleges in the State’, the sub committee under the chairmanship of the Hon‘ble Chief Minister has taken a decision viz No institution shall be given No Objection Certificate to open new B Ed college.

As per the master(perspective) plan of Shivaji University, Kolhapur, there are adequate number of Education (B Ed) colleges in each district. Therefore presently there does not seem much requirement in the field (faculty) of Education (B.Ed)."

5. We have heard Mr. Deshmukh appearing for petitioners and Mr. Malvankar, AGP for respondent

nos.l and 2. In our opinion the order of the State Government cannot be sustained. The University has strongly recommended that the college should be transferred and in that behalf specific resolution was passed in the meeting of the Management Council on 26.7.200l. In that regard a letter was also addressed on l3.7.200l whereby the Incharge Director of the University Development Board requested that necessary permission may be granted. Section 92(6) provides that the University may take over the college or a recognised institution or transfer the same to any management with prior approval of the State Government after following the procedure prescribed in that behalf. The fact that the 'perspective plan' which has been prepared by the University, does not contain any proposal for new college, may be relevant for opening a new college but the college in the instant case is not a new college but is an old and existing college and therefore the fact that there is no provision made for opening new college in the perspective plan is wholly irrelevant so far as the old college which was running for several years. The University has taken a categorical stand that the management should be transferred and the college should be revived. Therefore the perspective plan

which has been prepared for the establishment of new colleges in future has no relevance while determining the issue of grant of transfer under section 92(6) of the Maharashtra University Act. The respondent nos.l and 2 have clearly misdirected themselves in relying on the perspective plan while rejecting the prayer made by the teachers for transfer of the management. It is seen from the impugned order that the NOC was declined solely on the ground that the perspective plan contain no proposal for opening of a new college. In the above circumstances the impugned passed by the respondent no.2 dated l3.l2.2004 is quashed and set aside. Respondent nos.l and 2 are directed to grant permission under section 92(6) and also issue necessary No Objection Certificate within a period of two weeks from today. Rule is accordingly made absolute with no order as to costs.